IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.923 OF 2006

Rajaram Appaji Todkar ...Appellant

vs.

Maruti Jotiba Waganekar and ors. ...Respondents

Mr.G.N.Saluke for the Appellant
Mr.S.V.Sadavarte with Mr.Pundalik Bhalbar for Respondent No.1

CORAM: A.S.OKA,J.
DATE : JULY 6, 2007.

P.C.:

1. Heard learned Advocate for the Appellant. The Appellant is the original Plaintiff who filed a suit for injunction. The Appellant claims to be the owner of the land bearing C.T.S.No.52. According to the case of the Appellant-Plaintiff, an open space between C.T.S.no.52 and a Gram Panchayat Road is of his ownership and is in his possession. The Respondents-Defendants are having property on the other side of the road. A suit was filed by the Appellant as the Respondents threatened to carry on construction in the said open space. The Trial Court decreed the suit. The Appellate Court has upset the said decree.

2. The learned Advocate for the Appellant pointed out that during the pendency of the civil suit, the revenue authority acting in collusion with the contesting Respondents ordered a fresh enquiry and a fresh sanad was issued in favour of the third Respondent in respect of the suit property. He

submitted that the order of revenue authority and the subsequent grant of sanad on the basis of order of revenue authority could not have been considered by the Appellate Court. He stated that the sanad issued in favour of the Appellant could not have been nullified in this fashion during the pendency of the suit. He criticised the finding of the Appellate Court that the sanad was not a document of title. He submitted that in any event, the finding recorded by the Trial Court regarding possession of the Appellant was not disturbed by the Appellate Court and therefore the decree of the trial Court ought to have been maintained.

3. I have considered the submissions. The Appellant approached the Court with a case that he is the owner of the property in dispute on the basis of a sanad. It is true that during the pendency of the suit, the Superintendent of Land Records directed a fresh enquiry. Thereafter, a fresh enquiry was held and it was directed that the name of the third Respondent (third defendant) should be recorded as the owner and possessor of the disputed land. The approach adopted by the Appellate Court is that the sanad granted in favour of the Appellant as well as the sanad issued in favour of the third Respondent deserve to be discarded. The case of ownership as pleaded by the Appellant was based on the sanad granted in favour of the Appellant. Though a sanad was issued subsequently in favour of the third Respondent on the basis of

an order passed by the revenue authority, it cannot be said that the order or the sanad are nullity. If the order of revenue authority and consequential action of granting a sanad to the third Respondent is illegal, it is for the Appellant to adopt an appropriate remedy. No falut can be found with the finding of the Appellate Court that the Appellant has not established his ownership. The Appellate Court was right in holding that the Appellant has not established his ownership. The suit filed by the Appellant was not only on the ground that the prior possession of the Appellant deserves to be protected. The suit was filed on the basis of title. Once, the Appellate Court recorded a valid finding that the Appellant has failed to establish his title, the Appellate Court was justified in setting aside the decree passed by the Trial Court. Considering the material before the Appellate court, no fault can be found with the decree passed by the Appellate court. It must be however noted that the Appellate Court has not accepted the title or ownership of any of the defendants.

4. Subject to what is stated above, there is no merit in the Appeal and the same is dismissed with no order as to costs.

JUDGE